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SIPDIS

DEPT FOR WHA/CAR, WHA/EPSC, EB/TPP/IPE; USDOC FOR USPTO (BOLAND); DEPT PASS USTR; WHITE HOUSE FOR USTR FOR R VARGO, A MALITO, K HAUDA

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SUBJECT: DOMINICAN REPUBLIC: SENATE PRESIDENT VOWS TO BLOCK ANTI-IPR LEGISLATION

1. Summary: Senate President Andres Bautista told the DCM on October 11 that he will not put onto the Senate agenda a legislative proposal inimical to patent and trademark law submitted in August by the president of the Senate Commission on Industry, Commerce and Free Trade Zones Alejandro Santos. The draft legislation would reduce sanctions for intellectual property (IP) violators, weaken data protection and allow compulsory licenses to be granted by government non-action. This is the third such proposal submitted to Congress during the last year. In each instance, the Embassy has been effective in arguing against the proposals, bringing its objections to the attention of the Dominican authorities both in writing and through meetings with congressional leaders. End summary.

2. Senate President Andres Bautista, Senator Pedro Alegria and Senator Cesar Diaz Filpo called on the DCM on October 11 in response to the DCM's letter advising Bautista of anti-trade, anti-CAFTA aspects of proposed legislation submitted in August to change (weaken) the country's industrial property law. FCS officer, Department desk officer and EcoPol attended. The draft legislative proposal was almost certainly prepared or at least helped along by Dominican pharmaceutical association INFADOMI, some of whose members are known to pirate patented and trademarked products. Bautista was quick to point out that this was a proposal supported by only one member of the Senate (Alejandro Santos) and that it is not being considered for passage.

3. Bautista and his colleagues welcomed details about the potential damage such legislation would cause, some of which were already familiar to them. Principal problems with the legislation as drafted are that it would 1) remove prison sanctions for patent violators and create them for cases where individuals applying for patents provide incorrect information (either intentionally or by accident), 2) weaken data protection, and 3) allow automatic granting of compulsory licenses to firms which file applications with the patent office and receive no response within 120 days.

4. Bautista said that he was suspicious of the proposed legislation and its one-senator support from the beginning. This prompted him to appoint Senator Pedro Alegria to head a commission to review the proposal. Alegria asked economic officer to provide additional written details of the problematic aspects of the legislation for future use. While Bautista did not make a direct link to Santos, involvement with the IP proposal, he informed us that Santos was recently replaced as head of the Senate's Commission on Industry, Commerce and Free Trade Zones, by La Vega Senator Fausto Lpez Sols.

5. This is the third time over the past year that similar, IP-weakening proposals have been submitted to Congress. Each time the Embassy has expressed USG concern in writing to congressional leadership and followed-up with meetings with congressional leadership, successfully arguing against passage. Embassy has advised local attorneys associated with pharmaceutical association Pharma in each instance. Pharma is scheduled to visit the Dominican Republic next week.

6. Comment: Bautista's assurance that he will not consider the proposed IP-weakening legislation comes as the government and country prepare for entry into force of the free trade agreement with the United States and Central America (DR-CAFTA). While similar IP proposals have failed in the past, local patent attorneys expressed their worries to the Embassy recently that the current proposal stood a greater chance of being approved, wrapped with other reform legislation now under congressional review and necessary for DR-CAFTA implementation. Embassy believes that ploy has been blocked.

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